

# EXHIBIT 17

IN THE EASTERN DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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U.S. BANK, National Association

Plaintiff,

Case No. 4:21-cv-00120

v.

MICHAEL QUALIZZA, NEIL D. FREEMAN,  
TIMOTHY DIXON,

Defendants and Counterclaimants,

and

DFQ MANAGEMENT LLC, and 1501 WASHINGTON ST. LOUIS,  
LLC,

Counterclaim Defendants  
-----x

November 21, 2022

10:00 a.m.

488 Madison Avenue

New York, New York

EXPERT TESTIMONY OF DANIEL H. LESSER, appearing  
at the above-mentioned time and place, before  
ANNMARIE OAKLEY, a Notary Public of the State of  
New York.

1 D. LESSER

2 EXAMINATION BY MR. KINGSTON:

3 (USB3826 to USB3958 was introduced as  
4 Exhibit DHL-1.)

5 (Seven-page document was introduced as  
6 Exhibit DHL-2)

7 (Four-page document was introduced as  
8 Exhibit DHL-3.)

9 (Three-page document was introduced as  
10 Exhibit DHL-4.)

11 Q. Mr. Lesser, we met briefly off-the-record.  
12 My name is John Kingston and I represent the  
13 plaintiff and the counterclaim defendant in this  
14 case. I understand that you have been retained to  
15 provide expert testimony on behalf of both the  
16 defendants and the counterclaimants, is that so?

17 A. I believe that is correct.

18 Q. Tell me the opinions that you intend to  
19 provide at trial.

20 A. Based on my review and experience I did  
21 not find any evidence that any comparable hotel in  
22 the St. Louis business district was profitable in  
23 2020. Additionally, I did not find any comparable  
24 hotels in markets that were able to meet,  
25 incomparable markets, that were able to meet the

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2 last hotels debt service coverage ratio during the  
3 height of the pandemic.

4 Specifically, I did not find any comparable  
5 hotel located in the CBD in St. Louis or a  
6 comparable market determined further as Louisville,  
7 Cincinnati, Kansas City and Indianapolis that would  
8 have met the last hotels required debt service  
9 coverage ratio in December 2020 based on the last  
10 hotels debt service per available room compared to  
11 net operating income on a per available room basis  
12 of the comparable hotels.

13 Finally, most lenders offered flexibility to  
14 hotel owners during the pandemic. Based on my  
15 review and experience I'm not aware of any  
16 circumstance in which a lender matured a hotel loan  
17 and did not extend its terms during the height of  
18 the pandemic.

19 Q. Have you fully described for me the  
20 opinions that you intend to offer at trial?

21 A. Yes, sir.

22 Q. When you say "based on your review and  
23 experience" what exactly did you review? And I will  
24 clarify. Mr. Lesser, you recall your statement  
25 regarding your review and experience related to

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2 the world froze I along with most of my industry  
3 colleagues were intensely speaking with each other  
4 all day, everyday, trying to figure out what was  
5 going on, what was happening in the market and there  
6 with a strong sense of collegiality and partnership  
7 given that COVID came out of the middle of nowhere  
8 as nobody expected it. The tremendous downturn the  
9 industry experienced due to lockdowns was  
10 unprecedented particularly compared to other  
11 downturns like after 9/11 and after the great  
12 financial crisis. And coming back to my conclusion,  
13 based on my review and experience during this  
14 timeframe I'm not aware of any circumstance where a  
15 lender matured a hotel loan and did not extend its  
16 term during the height of the pandemic.

17 Q. Can you identify any particular borrower  
18 that requested that the terms of a loan be extended  
19 during the height of the pandemic?

20 A. Not off the top of my head.

21 Q. So as far as the facts or data that would  
22 go into that review you can't identify a single  
23 borrower that requested an extension, is that so?

24 A. Not off the top of my head.

25 Q. Do you know if your file in this

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2 Q. Nor are you going to offer any testimony  
3 as to whether the guarantor's performance was  
4 impossible, is that right?

5 A. That is correct.

6 Q. By taking a broader view you do have an  
7 opinion as to whether or not COVID impaired the  
8 ability of participants in the hotel market to  
9 perform in general?

10 A. That's fair.

11 Q. And did it in your view?

12 MS. NASSER: Objection. Vague.

13 A. Yeah, I'm not clear. Did what?

14 Q. Did the COVID pandemic impair the  
15 operations of hotels in the hotel industry based on  
16 the experience that you just describe to us?

17 A. Very much so. In a negative manner, yes.

18 Q. The pandemic effected the operations of  
19 participants in the hotel market in a negative  
20 manner, is that right?

21 A. Yes.

22 Q. Would you say that negative effect was  
23 material or immaterial?

24 MS. NASSER: Objection. Calls for  
25 legal conclusion.

1 D. LESSER

2 A. I'm not an attorney.

3 Q. Just based on your opinion as somebody  
4 who's been operating in this industry for 40 years  
5 would you say that the effect was material or  
6 immaterial?

7 A. I would say that nationally, regionally,  
8 and locally, the hotel industry experienced a  
9 precipitous decline in 2020 as measured by all  
10 reliable indicators of financial performance.

11 Q. That sounds pretty material to me. Does  
12 it sound material to you, sir?

13 MS. NASSER: Objection. Calls for a  
14 legal conclusion. Asked and answered.

15 A. Excuse me. I haven't used the word  
16 material in my testimony or in my report. I used  
17 the word precipitous decline.

18 Q. You're familiar with the word material,  
19 yes?

20 A. I'm familiar with the word. I can't tell  
21 you I'm an expert on the formal dictionary  
22 definition of that term.

23 Q. What your understanding of what the word  
24 material means?

25 A. Significant.